

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM LEE WALKER,

Petitioner,

v.

B. CURRY, Warden,

Respondent.

No. C 07-0147 WHA (PR)

**ORDER DENYING
CERTIFICATE OF
APPEALABILITY**

This is a habeas corpus case filed by a state prisoner pursuant to 28 U.S.C. 2254. The Petition is directed to a parole denial. The petition was denied on its merits in an order dated October 14, 2008. Judgment was entered that day.

On November 13, 2008, petitioner filed a notice of appeal, requesting a certificate of appealability ("COA"). *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). The Clerk processed the appeal without a ruling on the request for a COA because at that time, a prisoner did not have to obtain a certificate of appealability in order to appeal the denial of a habeas petition challenging the denial of parole. *See White v. Lambert*, 370 F.3d 1002, 1004 (9th Cir. 2004); *Rosas v. Nielsen*, 428 F.3d 1229, 1231-32 (9th Cir. 2005) (per curiam). On April 22, 2010, the Ninth Circuit overruled *White* and *Rosas* on that point, and held that a prisoner must obtain a COA. *See Hayward v. Marshall*, 603 F.3d 546, 554 (9th Cir. 2010) (en banc). On September 24, 2010, pursuant to *Hayward*, the Ninth Circuit remanded the case for the limited purpose of a decision on whether to grant or deny a COA.


1 A judge shall grant a certificate of appealability "only if the applicant has made a
2 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The
3 certificate must indicate which issues satisfy this standard. *See id.* § 2253(c)(3). "Where a
4 district court has rejected the constitutional claims on the merits, the showing required to satisfy
5 § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find
6 the district court's assessment of the constitutional claims debatable or wrong." *Slack v.*
7 *McDaniel*, 120 S.Ct. 1595, 1604 (2000). For the reasons set out in the ruling on the petition,
8 jurists of reason would not find debatable or wrong that the denial of parole violated neither his
9 right to due process nor his right to equal protection. Petitioner's request for a certificate of
10 appealability is **DENIED**.

11 The clerk shall transmit the file, including a copy of this order, to the Ninth Circuit. *See*
12 Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). Petitioner
13 may then ask the Ninth Circuit to issue the certificate, *see* R.App.P. 22(b)(1), or if he does not,
14 the notice of appeal will be construed as such a request, *see* R.App.P. 22(b)(2).

15 The Clerk shall close the file.

16 **IT IS SO ORDERED.**

17 Dated: November 10, 2010.

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19 WILLIAM ALSUP
20 UNITED STATES DISTRICT JUDGE
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